

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/06/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000516

FILED: \_\_\_\_\_

STATE OF ARIZONA

CARRIE M COLE

v.

ROBERT C BREEN

ROBERT C BREEN  
1105 S ELK RIDGE PT  
PAYSON AZ 85541-0000

DISPOSITION CLERK-CSC  
REMAND DESK CR-CCC  
SCOTTSDALE CITY COURT  
FINANCIAL SERVICES-CCC

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. R0111830

Charge: A. SPEED GREATER THAN REASONABLE AND PRUDENT

DOB: 05/30/37

DOC: 03/29/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/06/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000516

This matter has been under advisement since the date of oral argument on April 8, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Scottsdale City Court, and the Memoranda submitted by the parties and counsel.

Appellant has filed a timely Notice of Appeal from the judgment of responsibility and civil sanction entered for his violation of A.R.S. Section 28-701(A), Speeding, a Civil Traffic violation. The violation occurred on March 29, 2001 at 7:30 a.m. and the citation was properly served upon the Appellant.

Appellant requested a trial or hearing by mail for the reason that he resided in Payson, Arizona. Appellant claims on appeal that he was denied his right of confrontation and not permitted to challenge the testimony of a police officer or the operator of the photo radar unit. Appellant's complaints appear to be well-founded. This Court ordered additional memoranda be prepared by the parties on the issue of a "trial by declaration" as utilized by the Scottsdale City Court.

This Court concludes that a "trial by declaration" is not precluded by the Rules of Procedure in Civil Traffic cases, as Rule 19 provides that the Arizona Rules of Evidence shall not apply. Clearly, a court may consider any evidence offered by the parties which is relevant and material even if that evidence is made by declaration. Additionally, the trial court has the ability to allow one or more party to waive its presence at the time scheduled for trial.

In this case, no trial date was set. Appellant was not informed that he had a trial date where he could come and challenge, or cross-examine the testimony or evidence to be presented against him. Appellant was given a deadline of July

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/06/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000516

5, 2001 to submit his written declaration to the court. This was error by the trial court in its failure to schedule a specific trial date and to notify all parties of that trial date.

This Court also notes that the judgment that is part of the Scottsdale City Court's record is not dated or signed. If a specific trial date had been set, then this procedure would also ensure that a judgment would be signed on a specific date following the deadlines for the parties to submit their "declarations" to the court.

This Court must conclude that the "trial by declaration" procedure utilized by the Scottsdale City Court in this case was utilized in a manner so as to deny Appellant his right of confrontation of witnesses for the reason that no trial date was scheduled which would have given Appellant the option to appear at that trial date to confront and cross-examine any witness who would be called to testify against him.

IT IS THEREFORE ORDERED reversing the judgment of responsibility and civil sanction imposed by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter for a new trial in the Scottsdale City Court and for proceedings consistent with this opinion.